

# SLT city manager disputes LTN story

Oct. 21

**Dear Ms. Reed:**

The following comments were put together by staff in regard to published comments made in your column on October 15, 2009. The accuracy of comments made in this response below have been checked and verified by City staff. Some statements made to you in the story are at best inaccurate. While my preference has always been and will remain to protect the privacy of parties to personnel actions, inaccurate statements and characterizations of innocent employees cannot remain unchallenged.

Thank you for the opportunity to reply.

**David Jinkens, (South Lake Tahoe) City Manager**

Actual Clarification of Statements in October 15, 2009 Lake Tahoe News article: SLT city attorney requests public airing of grievance

1. Statement Re: Amount of money spent on outside legal counsel.

In the article, Mayor Birdwell is reported to have said that before the attorneys came on board he repeatedly asked for those figures from the City Manager and Finance Director. He and Councilwoman Lovell asked for the numbers when they were acting as the hiring subcommittee and were given the budgeted amount of \$196,000, and assumed we were working within budget. The City Attorneys discovered that \$800,000 had been spent in a single year out of undesignated reserves.

Clarification: Nothing was "uncovered". The \$196,000 did

not include legal services budgeted in the Redevelopment Agency's convention center project. All expenditures for legal services were within City Council approved budget, and no undesignated reserves were expended. Over the last several years the Finance Department and City Manager's Office have responded to several requests by Council Members for reports on the amount of money spent on outside legal services on a City-wide basis.

In January 2007 the Finance Department prepared, and the City Manager distributed to then Council Member Birdwell, upon his request, a summary of outside legal expenses for all departments for the fiscal years 2003-04, 2004-05, and 2005-06. The amounts averaged approximately \$700,000 annually each year. At the time, then seated Council majority was considering contracting out all legal services and not having a full-time city attorney's office.

In February 2009 the City Manager's Office, upon request from Mayor Birdwell, prepared an analysis of budgeted amounts for contracted services expenses in fiscal year 2008-09, which included outside legal expenses.

The hiring subcommittee requested the amount spent on outside legal counsel in connection with the recruitment of the new City Attorney. Staff provided the amount budgeted for outside legal services that appeared ongoing. The amount provided to the committee (\$193,600) did not include the amount budgeted for legal services in the Redevelopment Agency's CIP budget for the convention center project that were one-time in nature and reimbursed by the developer. In retrospect, this exclusion should have been mentioned.

In June 2009, the City Attorney's Office requested data from the Finance Department on the budget and expenses for outside legal services for fiscal year 2007-08 and year-to-date fiscal year 2008-09. The City Attorney presented a report to the City Council on June 30, 2009 that indicated that the

total amount expended over the 18 months of data by the City, less "pass through fees" paid by the developer of the convention center project, was \$842,601. This may be the number referred to in the article, where it is incorrectly characterized as a discovery that the budget was over spent and undesignated reserves were used.

In August 2009, the Finance Department did an analysis and reconciliation to the City's General Ledger of outside legal expenses over the same period (fiscal year 2007-08, and year-to-date through June 30 for fiscal year 2008-09), including a detailed sorting by project, service, vendor, City, Redevelopment Agency, and Waste Management JPA

In 2007-08 a total of \$777,183 was expended for legal services. Of this amount \$530,716 was expended by the RDA (\$433,386 of which was paid by the convention center project developer).

Year-to-date 2008-09 expenditures totaled \$432,939. Of this amount \$112,185 was expended by the RDA (\$70,857 of which was paid by the developer).

2. Statement Re: City TOT revenues budgeted \$1 million higher than actual.

Clarification: Who would have known 1 ½ years ago that the Nation and State would experience the worst economic downturn in modern history? Certainly, no one at the Federal or State government level predicted this situation. This is the worst economic recession since the 1930's and major declines in actual revenues vs. amounts budgeted currently are the norm for cities, states and other public agencies nationwide.

National statistics indicate that tourism has declined over 21% in California this year, and more than that in some other major tourism markets. TOT revenue is always a volatile major revenue source in South Lake Tahoe. It is the most difficult to forecast due to many factors that may affect actual

revenues, such as the weather, economic conditions, unemployment, home foreclosures, etc. The City's General Fund unallocated reserve requirement is set at 25% by the City Council as a hedge against economic downturns primarily because of the volatile nature of City revenues related to tourism (TOT and sales taxes). While City revenues are clearly down like they are to businesses, the City's overall financial condition is superior to the condition it was in 2002-2003 and it is better able to survive the economic downturn because of prudent financial planning and policies. Even in these difficult economic times, City government continues to provide essential public services to the community on a day-to-day basis and has not had to resort to massive layoffs of employees, reductions of services, closure of fire stations etc like in many other California cities.

### 3. Statement Re: Finance Director Reporting to the City Council

Clarification: This idea was one of the topics at the City Council's Strategic Planning Session August 4, 2009. The City Council discussed this issue again at its August 18, 2009 meeting and decided not to pursue this matter any further. Research into the reporting structures in other cities found that in more than 98% of the cities and public agencies surveyed the top finance position reported to the City Manager or equivalent, rather than directly to the City Council. We have seen the disastrous impact in Washington D.C. and Sacramento when financial matters and estimates become political and the City Council has wisely chosen not to have that happen here.

The Finance Director is a non-political position that is accountable to the City Manager, City Council, and ultimately to the public. The City Manager cannot just "spread cash around with little or no oversight." Spending must be within the Council approved budget, and in compliance with the City's financial policies and internal controls. The

City's financial records and transactions are audited annually by an independent auditing firm, and the City has received clean audit opinions. The City Manager specifically recommended to the City Council on June 30, 2009 in a written and oral report, that all warrants and expenditures over a certain dollar amount be approved by the City Council on a City Council agenda and not one person agreed with this recommendation.

4. Statement Re: the \$69,000 invoice for legal services.

Clarification: These legal services in regard to the ATM matter were authorized by the City Council, properly approved by the City Attorney and within available budget. At the June 30 City Council meeting, the City Attorney erroneously reported to the City Council that this bill was not properly approved. She was wrong. No backup documentation was provided by her to the City Council though the Finance Department had the backup documentation in their files. The Finance Director subsequently reviewed this transaction and prepared a full and complete report justifying the expenditure that was provided to the City Attorney on July 15, 2009 yet she made no correction to the City Council or Council record.

The payment was properly approved by the former City Attorney, Catherine DiCamillo after having received direction and approval from the City Council (during a closed session) to utilize the assistance of the contracted attorney to work with her on the pending termination of the City's contract with ATM. Since neither the City Attorney's Office nor the City Transit budget had sufficient budget for these legal fees, they were charged to the Non-Departmental professional service account which had funding available that was not specifically earmarked for other services.